

Assumption Needs (Last Revised: 9-6-19)
(Compiled from WPDG Grant Content, Past Projects, STFC Meeting, National Dialogue Call)

Assumption-Related State/Tribal Needs

- What are the motivations/pros and cons for assuming? Why should a state put in more resources?
 - What benefits are there for states/tribes from assuming the Section 4040 program?
 - Are there alternatives to assumption that can be more beneficial to *some* states/tribes?
- What are the range of responsibilities that a state/tribe takes on when assuming?
- What different ways can states/tribes fund their assumed program/create a sustainable program?
- What different approaches to assumption are possible? How will partial assumption work (specific activities only, existing approved permits, phased-in responsibilities)?
- What is acceptable for permitting frameworks (some states specifically want to assume so the framework is not the same as the Corps', where local governments currently play a role in permitting within the state)?
- How can assumption speed up permitting? What evidence exists that it will speed up permitting?
- What steps need to take place in the process of preparing/applying for assuming?
- What qualifies as a "complete" assumption package?
- What are the elements of the assumption application development and review process?
- How can states considering assumption effectively address the needs for:
 - Federal consistency review
 - Assumable waters determinations
 - Mandatory tribal consultation (Section 106)
 - Endangered Species Act (ESA) review
 - Coastal consistency review
- When considering impacts of assumption on tribes, are there benefits to/challenges for tribes when a state assumes the Section 404 Program?
- What can states/tribes learn from or utilize that has already been developed by states working on assumption?
- What mistakes can those considering or applying for assumption avoid (lessons learned)?
- What are common/potential legal and regulatory challenges? How have/can applicants overcome them?
- Are there any assumption best practices, EPA-accepted requirements/content specifics/templates/formats?
- How do programs considering assumption secure data needed from the Corps? Get access to time and cost data from EPA Headquarters?
- Clarity on mitigation requirements, monitoring and enforcement
 - How do states/tribes interested in assumption deal with already permitted mitigation banks?
 - How is the mitigation rule relevant to assumption?
 - How does a state/tribe know if mitigation has been accomplished/reached key point?
 - How can states/tribes address concerns about inheriting all 404s that require regulatory enforcement?
 - How can states/tribes interested in assuming consolidate permits - what can(not) be combined)?
- What specific definition or requirements does the Corps have to determine what constitutes tribal lands that the Corps retains (Florida notes that the Corps is currently working on developing a definitive answer)?
- How do states review for aesthetics and economics required by the 404(b)(1) guidelines (not well defined)?

Requested Tools

Better assessment tools to support assumption

- Template materials for developing a “complete” application – standardized/recommended template for an assumption application to EPA
- Guiding principles and lessons learned re assumable waters studies
- Guiding principles and lessons learned re conducting federal consistency reviews (equivalency; e.g. matrix)
- How to conduct an alternatives analysis
- Guiding principles and lessons learned re state feasibility studies
- Performance measures and baselines examples
- Public notice format, permit format
- Examples of ESA review (so staff know whether to elevate consultation) and reporting
- Examples of draft rules and forms
- Building a tool for ESA assessments similar to the USFWS IPAC tool (or included in IPAC)